

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

KURT ANDERSON,	:	3:17-cv-1241
	:	
Petitioner,	:	
v.	:	Hon. John E. Jones III
	:	
UNITED STATES OF AMERICA,	:	
	:	Hon. Martin C. Carlson
Respondent.	:	

ORDER

March 12, 2019

AND NOW, upon consideration of the Report and Recommendation (Doc. 10) of United States Magistrate Judge Martin C. Carlson recommending that the instant petition for writ of habeas corpus filed pursuant to 28 U.S.C. § 2241 be dismissed for lack of jurisdiction but without prejudice to Petitioner seeking leave of the appropriate court of appeals to file a second and successive petition pursuant to 28 U.S.C. § 2255, and noting that Petitioner has not filed objections to the report¹ and that there is and that there is no clear error on the record, *see Nara v.*

¹ When parties fail to file timely objections to a magistrate judge's report and recommendation, the Federal Magistrates Act does not require a district court to review the report before accepting it. *Thomas v. Arn*, 474 U.S. 140, 149 (1985). As a matter of good practice, however, the Third Circuit expects courts to "afford some level of review to dispositive legal issues raised by the report." *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir. 1987). The advisory committee notes to Rule 72(b) of the Federal Rules of Civil Procedure indicate that "[w]hen no timely objection is filed, the court need only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation." FED. R. CIV. P. 72(b), advisory committee notes; *see also Henderson*, 812 F.2d at 878-79 (stating that "the failure of a party to object to a magistrate's legal conclusions may result in the loss of the right to de novo review in the district court"); *Tice v. Wilson*, 425 F. Supp. 2d 676, 680 (W.D. Pa. 2006) (holding that the court's review is conducted under the "plain error" standard); *Cruz v. Chater*, 990 F. Supp. 375-78 (M.D. Pa.

Frank, 488 F.3d 187, 194 (3d Cir. 2007) (explaining that “failing to timely object to [a report and recommendation] in a civil proceeding may result in forfeiture of *de novo* review at the district court level”) and the Court finding Judge Carlson’s analysis to be thorough, well-reasoned, and fully supported by the record **IT IS HEREBY ORDERED THAT:**

1. The Report and Recommendation (Doc. 10) of Magistrate Judge Carlson is **ADOPTED** in its entirety.
2. The petition for writ of habeas corpus (Doc. 1) is **DISMISSED** for lack of jurisdiction. This dismissal is without prejudice to Petitioner pursuing relief with the appropriate court of appeals pursuant to 28 U.S.C. § 2255.
3. The Clerk of Court is directed to **CLOSE** the file on this case.

s/ John E. Jones III
John E. Jones III
United States District Judge

1998) (holding that the court’s review is limited to ascertaining whether there is “clear error on the face of the record”); *Oldrati v. Apfel*, 33 F. Supp. 2d 397, 399 (E.D. Pa. 1998) (holding that the court will review the report and recommendation for “clear error”). The Court has reviewed the magistrate judge’s report and recommendation in accordance with this Third Circuit directive.